

**Calendar No. 499**

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3196**

**[Report No. 111–239]**

To amend the Presidential Transition Act of 1963 to provide that certain transition services shall be available to eligible candidates before the general election.

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IN THE SENATE OF THE UNITED STATES

APRIL 13, 2010

Mr. KAUFMAN (for himself, Mr. VOINOVICH, Mr. AKAKA, Mr. LIEBERMAN, Mr. CARPER, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

AUGUST 2, 2010

Reported by Mr. LIEBERMAN, without amendment

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**A BILL**

To amend the Presidential Transition Act of 1963 to provide that certain transition services shall be available to eligible candidates before the general election.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Pre-Election Presi-  
3       dential Transition Act of 2010”.

4 **SEC. 2. CERTAIN PRESIDENTIAL TRANSITION SERVICES**

5                   **MAY BE PROVIDED TO ELIGIBLE CAN-**  
6                   **DIDATES BEFORE GENERAL ELECTION.**

7       (a) IN GENERAL.—Section 3 of the Presidential  
8       Transition Act of 1963 (3 U.S.C. 102 note) is amended  
9       by adding at the end the following new subsection:

10       “(h)(1)(A) In the case of an eligible candidate, the  
11       Administrator—

12                   “(i) shall notify the candidate of the can-  
13                   didate’s right to receive the services and facili-  
14                   ties described in paragraph (2) and shall pro-  
15                   vide with such notice a description of the nature  
16                   and scope of each such service and facility; and

17                   “(ii) upon notification by the candidate of  
18                   which such services and facilities such can-  
19                   didate will accept, shall, notwithstanding sub-  
20                   section (b), provide such services and facilities  
21                   to the candidate during the period beginning on  
22                   the date of the notification and ending on the  
23                   date of the general elections described in sub-  
24                   section (b)(1).

25       The Administrator shall also notify the candidate of  
26       the services provided under sections 7601(c) and

1       8403(b) of the Intelligence Reform and Terrorism  
2       Prevention Act of 2004.

3               “(B) The Administrator shall provide the notice  
4       under subparagraph (A)(i) to each eligible can-  
5       didate—

6               “(i) in the case of a candidate of a major  
7       party (as defined in section 9002(6) of the In-  
8       ternal Revenue Code of 1986), on one of the  
9       first 3 business days following the last nomi-  
10      nating convention for such major parties; and

11              “(ii) in the case of any other candidate, as  
12      soon as practicable after an individual becomes  
13      an eligible candidate (or, if later, at the same  
14      time as notice is provided under clause (i)).

15              “(C)(i) The Administrator shall, not later than  
16      January 1 of 2012 and of every 4th year thereafter,  
17      prepare a report summarizing modern presidential  
18      transition activities, including a bibliography of rel-  
19      evant resources.

20              “(ii) The Administrator shall promptly make  
21      the report under clause (i) generally available to the  
22      public (including through electronic means) and  
23      shall include such report with the notice provided to  
24      each eligible candidate under subparagraph (A)(i).

1       “(2)(A) Except as provided in subparagraph (B), the  
2 services and facilities described in this paragraph are the  
3 services and facilities described in subsection (a) (other  
4 than paragraphs (2), (3), (4), and (7) thereof), but only  
5 to the extent that the use of the services and facilities is  
6 for use in connection with the eligible candidate’s prepara-  
7 tions for the assumption of official duties as President or  
8 Vice-President.

9       “(B) The Administrator—

10           “(i) shall determine the location of any office  
11 space provided to an eligible candidate under this  
12 subsection;

13           “(ii) shall, as appropriate, ensure that any com-  
14 puters or communications services provided to an eli-  
15 gible candidate under this subsection are secure;

16           “(iii) shall offer information and other assist-  
17 ance to eligible candidates on an equal basis and  
18 without regard to political affiliation; and

19           “(iv) may modify the scope of any services to  
20 be provided under this subsection to reflect that the  
21 services are provided to eligible candidates rather  
22 than the President-elect or Vice-President-elect, ex-  
23 cept that any such modification must apply to all eli-  
24 gible candidates.

1       “(C) An eligible candidate, or any person on behalf  
 2 of the candidate, shall not use any services or facilities  
 3 provided under this subsection other than for the purposes  
 4 described in subparagraph (A), and the candidate or the  
 5 candidate’s campaign shall reimburse the Administrator  
 6 for any unauthorized use of such services or facilities.

7       “(3)(A) Notwithstanding any other provision of law,  
 8 an eligible candidate may establish a separate fund for the  
 9 payment of expenditures in connection with the eligible  
 10 candidate’s preparations for the assumption of official du-  
 11 ties as President or Vice-President, including expenditures  
 12 in connection with any services or facilities provided under  
 13 this subsection (whether before such services or facilities  
 14 are available under this section or to supplement such  
 15 services or facilities when so provided). Such fund shall  
 16 be established and maintained in such manner as to qual-  
 17 ify such fund for purposes of section 501(c)(4) of the In-  
 18 ternal Revenue Code of 1986.

19       “(B)(i) The eligible candidate may—

20               “(I) transfer to any separate fund estab-  
 21               lished under subparagraph (A) contributions  
 22               (within the meaning of section 301(8) of the  
 23               Federal Election Campaign Act of 1971 (2  
 24               U.S.C. 431(8))) the candidate received for the  
 25               general election for President or Vice-President

1 or payments from the Presidential Election  
 2 Campaign Fund under chapter 95 of the Inter-  
 3 nal Revenue Code of 1986 the candidate re-  
 4 ceived for the general election; and

5 “(II) solicit and accept amounts for receipt  
 6 by such separate fund.

7 “(ii) Any expenditures from the separate fund  
 8 that are made from such contributions or payments  
 9 described in clause (i)(I) shall be treated as expendi-  
 10 tures (within the meaning of section 301(9) of such  
 11 Act (2 U.S.C. 431(9))) or qualified campaign ex-  
 12 penses (within the meaning of section 9002(11) of  
 13 such Code), whichever is applicable.

14 “(iii) An eligible candidate establishing a sepa-  
 15 rate fund under subparagraph (A) shall (as a condi-  
 16 tion for receiving services and facilities described in  
 17 paragraph (2)) comply with all requirements and  
 18 limitations of section 5 in soliciting or expending  
 19 amounts in the same manner as the President-elect  
 20 or Vice-President-elect, including reporting on the  
 21 transfer and expenditure of amounts described in  
 22 subparagraph (B)(i) in the disclosures required by  
 23 section 5.

24 “(4)(A) In this subsection, the term ‘eligible can-  
 25 didate’ means, with respect to any presidential election (as

1 defined in section 9002(10) of the Internal Revenue Code  
2 of 1986)—

3 “(i) a candidate of a major party (as defined in  
4 section 9002(6) of such Code) for President or Vice-  
5 President of the United States; and

6 “(ii) any other candidate who has been deter-  
7 mined by the Administrator to be among the prin-  
8 ciple contenders for the general election to such of-  
9 fices.

10 “(B) In making a determination under subparagraph  
11 (A)(ii), the Administrator shall—

12 “(i) ensure that any candidate determined to be  
13 an eligible candidate under such subparagraph—

14 “(I) meets the requirements described in  
15 article II, section 1, of the United States Con-  
16 stitution for eligibility to the office of President;

17 “(II) has qualified to have his or her name  
18 appear on the ballots of a sufficient number of  
19 States such that the total number of electors  
20 appointed in those States is greater than 50  
21 percent of the total number of electors ap-  
22 pointed in all of the States; and

23 “(III) has demonstrated a significant level  
24 of public support in national public opinion  
25 polls, so as to be realistically considered among

1           the principal contenders for President or Vice-  
 2           President of the United States; and

3           “(ii) consider whether other national organiza-  
 4           tions have recognized the candidate as being among  
 5           the principal contenders for the general election to  
 6           such offices, including whether the Commission on  
 7           Presidential Debates has determined that the can-  
 8           didate is eligible to participate in the candidate de-  
 9           bates for the general election to such offices.”.

10       (b) ADMINISTRATOR REQUIRED TO PROVIDE TECH-  
 11       NOLOGY COORDINATION UPON REQUEST.—Section  
 12       3(a)(10) of the Presidential Transition Act of 1963 (3  
 13       U.S.C. 102 note) is amended to read as follows:

14           “(10) Notwithstanding subsection (b), consulta-  
 15           tion by the Administrator with any President-elect,  
 16           Vice-President-elect, or eligible candidate (as defined  
 17           in subsection (h)(4)) to develop a systems architec-  
 18           ture plan for the computer and communications sys-  
 19           tems of the candidate to coordinate a transition to  
 20           Federal systems if the candidate is elected.”.

21       (c) COORDINATION WITH OTHER TRANSITION SERV-  
 22       ICES.—

23           (1) SECURITY CLEARANCES.—Section 7601(c)  
 24           of the Intelligence Reform and Terrorism Prevention  
 25           Act of 2004 (50 U.S.C. 435b note) is amended—



1 (A) by striking paragraph (1) and insert-  
 2 ing:

3 “(1) DEFINITION.—In this section, the term  
 4 ‘eligible candidate’ has the meaning given such term  
 5 by section 3(h)(4) of the Presidential Transition Act  
 6 of 1963 (3 U.S.C. 102 note).”, and

7 (B) by striking “major party candidate” in  
 8 paragraph (2) and inserting “eligible can-  
 9 didate”.

10 (2) PRESIDENTIALLY APPOINTED POSITIONS.—  
 11 Section 8403(b)(2)(B) of such Act (5 U.S.C. 1101  
 12 note) is amended to read as follows:

13 “(B) OTHER CANDIDATES.—After making  
 14 transmittals under subparagraph (B), the Of-  
 15 fice of Personnel Management shall transmit  
 16 such electronic record to any other candidate  
 17 for President who is an eligible candidate de-  
 18 scribed in section 3(h)(4)(B) of the Presidential  
 19 Transition Act of 1963 (3 U.S.C. 102 note) and  
 20 may transmit such electronic record to any  
 21 other candidate for President.”.

22 (d) CONFORMING AMENDMENTS.—Section 3 of the  
 23 Presidential Transition Act of 1963 (3 U.S.C. 102 note)  
 24 is amended—

1 (1) in subsection (a)(8)(B), by striking “Presi-  
 2 dent-elect” and inserting “President-elect or eligible  
 3 candidate (as defined in subsection (h)(4)) for Presi-  
 4 dent”; and

5 (2) in subsection (e), by inserting “, or eligible  
 6 candidate (as defined in subsection (h)(4)) for Presi-  
 7 dent or Vice-President,” before “may designate”.

8 **SEC. 3. AUTHORIZATION OF TRANSITION ACTIVITIES BY**  
 9 **THE OUTGOING ADMINISTRATION.**

10 (a) IN GENERAL.—The President of the United  
 11 States, or the President’s delegate, may take such actions  
 12 as the President determines necessary and appropriate to  
 13 plan and coordinate activities by the Executive branch of  
 14 the Federal Government to facilitate an efficient transfer  
 15 of power to a successor President, including—

16 (1) the establishment and operation of a transi-  
 17 tion coordinating council comprised of—

18 (A) high-level officials of the Executive  
 19 branch selected by the President, which may in-  
 20 clude the Chief of Staff to the President, any  
 21 Cabinet officer, the Director of the Office of  
 22 Management and Budget, the Administrator of  
 23 the General Services Administration, and the  
 24 Director of the Office of Personnel Manage-  
 25 ment; and

1 (B) any other persons the President deter-  
2 mines appropriate;

3 (2) the establishment and operation of an agen-  
4 cy transition directors council which includes career  
5 employees designated to lead transition efforts with-  
6 in Executive Departments or agencies;

7 (3) the development of guidance to Executive  
8 Departments and agencies regarding briefing mate-  
9 rials for an incoming administration, and the devel-  
10 opment of such materials; and

11 (4) the development of computer software, pub-  
12 lications, contingency plans, issue memoranda,  
13 memoranda of understanding, training and exercises  
14 (including crisis training and exercises), programs,  
15 lessons learned from previous transitions, and other  
16 items appropriate for improving the effectiveness  
17 and efficiency of a Presidential transition that may  
18 be disseminated to eligible candidates (as defined in  
19 section 3(h)(4) of the Presidential Transition Act of  
20 1963, as added by section 2(a)) and to the Presi-  
21 dent-elect and Vice-President-elect.

22 Any information and other assistance to eligible can-  
23 didates under this subsection shall be offered on an equal  
24 basis and without regard to political affiliation.

25 (b) REPORTS.—

1           (1) IN GENERAL.—The President of the United  
2       States, or the President’s delegate, shall provide to  
3       the Committee on Oversight and Government Re-  
4       form of the House of Representatives and the Com-  
5       mittee on Homeland Security and Governmental Af-  
6       fairs of the Senate reports describing the activities  
7       undertaken by the President and the Executive De-  
8       partments and agencies to prepare for the transfer  
9       of power to a new President.

10          (2) TIMING.—The reports under paragraph (1)  
11       shall be provided six months and three months be-  
12       fore the date of the general election for the Office  
13       of President of the United States.

14          (c) AUTHORIZATION OF APPROPRIATIONS.—There  
15       are authorized to be appropriated such sums as may be  
16       necessary to carry out the provisions of this section.



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